CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 90.

FRANK W. GUY, W. T. STANWORTH, ET AL.

vs.

JOHN A. DONALD.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

FILED JULY 26, 1905.

(19,860.)

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INDEX.

	Page.
Certificate from the United States circuit court of appeals for the fourth circuit	1
Statement of facts	1
Questions certified	4
Judge's certificate	4
Clerk's certificat	5

United States Circuit Court of Appeals.

FOURTH CIRCUIT.

No. 600.

CERTIFICATE OF QUESTIONS BY THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT TO THE SUPREME COURT OF THE UNITED STATES.

Filed July 7, 1905.

Frank W. Guy, W. T. Stanworth et al., Appellants, *versus* John A. Donald, Appellee.	Appeal from the District Court of the United States for the Eastern District of Virginia. At Norfolk.

The United States Circuit Court of Appeals for the Fourth Circuit, certifies that from the record on file in the above entitled cause, which is now pending in this court on an appeal from a final decree in favor of John A. Donald, the appellee, and which is undetermined, the following facts appear:

On January 14, 1901, a collision occurred between the Steamer Santuit, owned by John A. Donald, and the Schooner Churchman. The said steamer was coming into the Capes of Virginia from a foreign voyage, and as she approached the Capes, she was spoken by the Virginia Pilots, and Franklin W. Guy, a regularly licensed Virginia pilot, one of the appellants, was put aboard as pilot. He thereupon took charge of her navigation and proceeded to bring the vessel in from sea. Some distance below Thimble Light he sighted the Schooner "George Churchman," about three points on his port bow and distant from one to two miles He kept his course unchanged, the schooner keeping on hers, and their courses were intersecting. The master of the steamer called the attention of the pilot to the schooner, and urged him to do something to avoid her; but the pilot, while still in charge of navigation aboard the steamer,

brought the said steamer into collision with the schooner. There was no *vis major* and no other vessels in the way. The schooner kept her course to the last. The schooner was greatly damaged, and on arrival of the steamer at Norfolk, the schooner having been towed in, the owner of the schooner made claim against the steamer for the damages caused by the collision. Both the owner of the steamer and the owner of the schooner employed counsel. The schooner owner presented a bill for $4,375.00, and John A. Donald, the appellee, the owner of the steamer, after considerable negotiation and on the eve of suit, settled the claim for $3,175.00. On November 10, 1902, he filed a libel *in personam* against the Virginia pilots who form the Virginia Pilot Association, claiming that the collision was due to the negligence of Guy, the pilot in charge, and that they were liable for his negligence. The pilots excepted to the libel, on the ground that they were not liable for the negligence of each other. After argument, the District Court overruled the exception, and held that they were so liable (*Donald* v. *Guy*, 127 Fed. R., 228). Thereupon the defendants answered, denying liability on the merits. The case was tried, and the District Court held that the collision was solely due to the negligence of Guy, the pilot in charge, and that those composing the Pilot Association were liable for his negligence (*Donald* v. *Guy*, 135 Fed. R., 429).

The third paragraph of the libel in the case charges as follows:

"Third. The said defendants, as a matter of convenience to themselves, and in order to avoid conflict as to their respective rights to board vessels, have formed themselves into an unincorporated association, which they call the Virginia Pilot Association. The libellant avers that the general terms of that association are that the pilots have agreed among themselves that they shall take turns in boarding vessels which are required by the statute to take a pilot. By a further agreement among themselves, the fees, which would otherwise be due the individual pilots for pilotage, are not paid by the vessels boarded to the special pilot that boards her, but are paid into a common fund and put in bank to the credit of said Virginia Pilot Association. The said parties, as members of the Virginia Pilot Association, own various property, including pilot boats, office furniture, and they lease offices and undergo various other expenses necessary to the conduct of said business. The funds collected from vessels for pilotage constitute a common fund, out of which they pay all expenses incident to the business, including office expenses,

expenses of operating their pilot boats, etc., and the balance remaining after such expenses is divided among the said parties. The bills for pilotage are made out in the name of the Virginia Pilot Association, and the bills against the said business are paid by checks of the Virginia Pilot Association.

The said defendants have elected O. E. Edwards as president of the said association and the above named W. T. Stanworth as secretary of the said association."

The libel propounded certain interrogatories to W. T. Stanworth, one of the defendants, which, with the answers thereto, are as follows:

"1. Are you secretary of the Virginia Pilot Association? A. I was on the 14th day of January, 1901.

2. Where are the records of said association kept? A. In the office of the Virginia Pilot Association, 273 Main Street, Norfolk, Va., such records as we keep.

3. Has the said association a constitution and by-laws, and if so, file a copy of the same with your answer? A. They have, and a copy is herewith filed.

4. If it has not a constitution and by-laws, in what shape is its organization, and file a copy of same with this answer in whatever shape it may be? A. It has a constitution and by-laws, a copy of which has been filed in accordance with my answer above.

5. What is the agreement among the members of the said association, or the rule, as to the order in which vessels who are required to take pilots shall be boarded? A. Briefly, turn and turn about; the first man in port is the first man sent out.

6. How are the bills for pilotage made out, and in whose name? File with this answer a copy of one of the blank bills. A. They are made out in the name of the Virginia Pilots Association, except in cases of national vessels and disputed bills.

7. When collections of pilotage are made, where are they put and to whose credit are they deposited? A. Sometimes in the safe in the office; sometimes deposited in bank to the credit of the Virginia Pilots Association.

8. When bills are paid by check, how is the check signed? File one of your blank checks with this answer. A. Signed by the president, countersigned by the secretary then acting as such.

9. What is the agreement among the members of the association as to the manner in which the profits are divided among each other, and how are the profits ascertained? A. At that time net profits were divided equally according

to the number of days a pilot was upon the active list, to say from thirty to thirty-five days, after the fixed expenses and necessary charges of the keeping of its equipment up to a seaworthy standard have been deducted from the gross earnings for this length of time.

10. If you are not secretary, who is? A. I was secretary at that time.

11. If the association has no officer by the title of secretary, who keeps its records, and what is his title? A. This has been answered by question 10.

12. The above questions are intended to apply to the state of affairs as they existed on January 14, 1901, and not to the date when the answer is filed.

Answer all of the above questions as of January 14th, 1901."

And thereupon the Circuit Court of Appeals for the Fourth Circuit certifies that the following questions of law arise and are presented by the assignment of errors in this case; that their decision is indispensable to a correct determination of the case, and to that end it desires the instruction of the Supreme Court concerning the same and for the proper decision of the same:

First. Are the members of the unincorporated association of pilots regularly licensed under the statutes of Virginia, organized as shown by the above statement of facts, and conducting its business as thereby shown, a partnership?

Second. If it is a partnership, are its members who are regularly licensed pilots under the statutes of Virginia, liable as such to owners of vessels piloted by them for the negligence of each other?

Third. If the members of this association do not technically constitute a partnership, are they nevertheless jointly liable to third parties whose vessels they navigate as pilots, for the negligent acts of each other?

As witness our hands this 7th day of July, A. D. 1905.

NATHAN GOFF,
Senior Circuit Judge.

J. C. PRITCHARD,
Circuit Judge.

THOS. J. MORRIS,
Dist. Judge for the District of Maryland.

UNITED STATES OF AMERICA, } *ss:*

I, Henry T. Meloney, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the original certificate filed and now remaining of record in the therein entitled cause.

Seal of the Court.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court of Appeals, at Richmond, Virginia, on this 17th day of July, A. D. 1905.

HENRY T. MELONEY,
Clerk U. S. Circuit Court of Appeals,
Fourth Circuit.